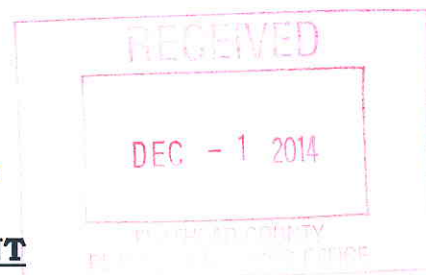


Flathead County
Planning & Zoning
1035 1st Ave W, Kalispell, MT 59901
Telephone 406.751.8200 Fax 406.751.8210



PETITION FOR ZONING AMENDMENT

Submit this application, all required information, and appropriate fee (see current fee schedule) to the Planning & Zoning office at the address listed above.

FEE ATTACHED \$ 2672.00

APPLICANT/OWNER:

1. Name: Van Shaw Phone: (214)754-7110
2. Mail Address: 2723 Fairmont Dr.
3. City/State/Zip: Dallas, TX 75201
4 Interest in property (if map amendment): Owner

Check which applies: ☒ Map Amendment ☐ Text Amendment:

TECHNICAL/PROFESSIONAL PARTICIPANTS:

1. Name: Sands Surveying Inc. Phone: (406) 755-6481
2. Mailing Address: 2 Village Loop
3. City, State, Zip: Kalispell, MT 59901
4. Email: eric@sandssurveying.com

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS, PLEASE COMPLETE THE FOLLOWING:

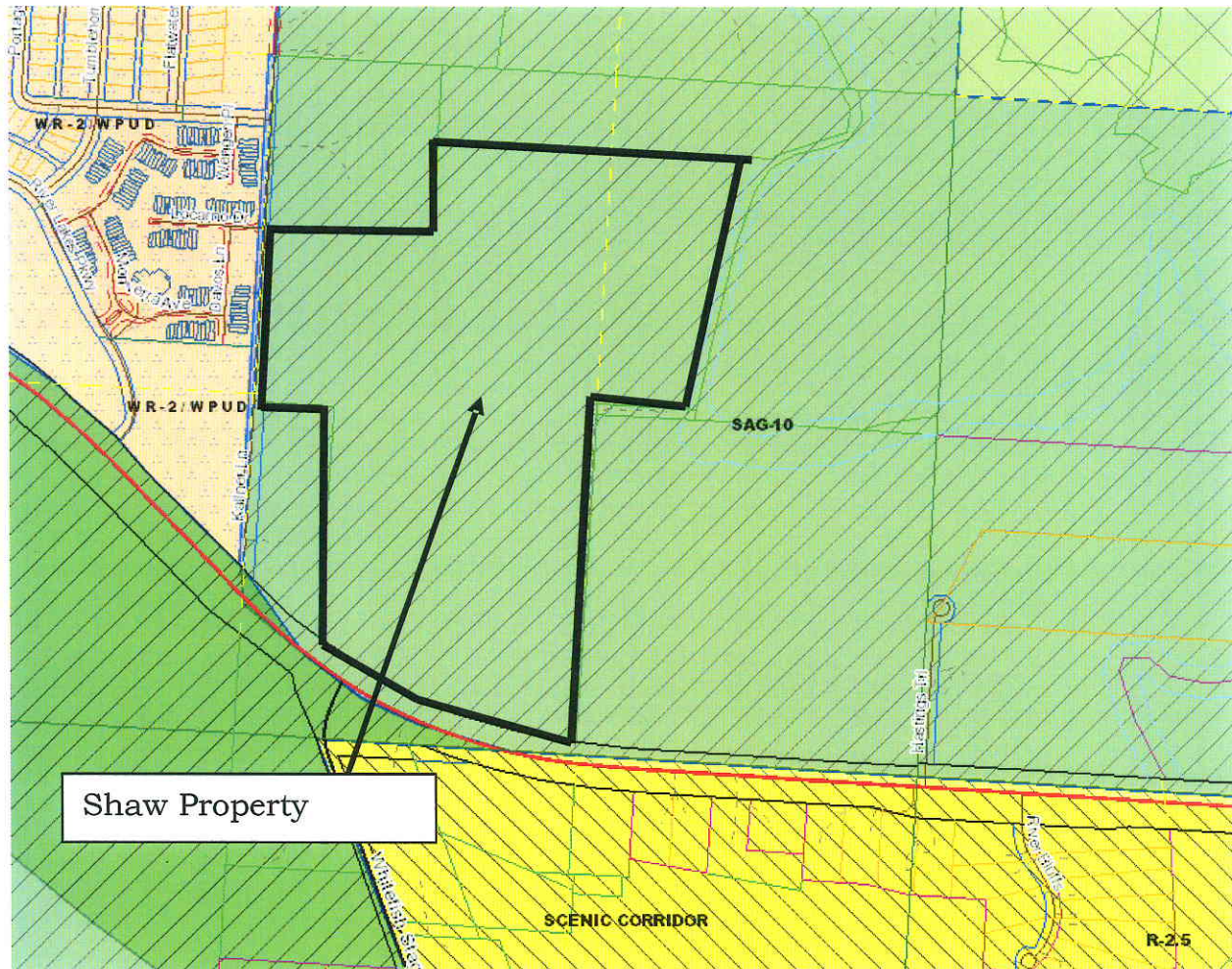
- A. What is the proposed zoning text/map amendment? N/A

IF THE REQUEST PERTAINS TO AN AMENDMENT TO THE ZONING MAP PLEASE COMPLETE THE FOLLOWING:

- A. Address of the property: 4435 Highway 40 W, Columbia Falls
B. Legal Description: Tract 3B (See Attached Warranty Deed)
(Lot/Block of Subdivision or Tract #)
8 - T30N - R21W
Section Township Range
(Attach sheet for metes and bounds)
C. Total acreage: 62.48 acres
D. Zoning District: South East Rural Whitefish Zoning District
E. The present zoning of the above property is: SAG-10 (Suburban Agricultural)
F. The proposed zoning of the above property is: SAG-5 (Suburban Agricultural)
G. State the changed or changing conditions that make the proposed amendment necessary: The property is 62.48 acres in size. The property is located near the City of Whitefish which has urban densities and there is 2.5 acre zoning just south across the highway. The applicant would like to develop the property

in the future and the SAG-5 will allow the applicant density options utilizing clustering or PUD provisions in the zoning code. The increased densities will help off-set the infrastructure costs without creating a subdivision that is out of character in this transition area between urban and rural jurisdictions.

Figure 1



THE FOLLOWING ARE THE CRITERIA BY WHICH ZONING AMENDMENTS ARE REVIEWED. PLEASE PROVIDE A RESPONSE AND DETAILED EXPLANATION FOR EACH CRITERION FOR CONSIDERATION BY THE PLANNING STAFF, PLANNING BOARD, AND COMMISSIONERS.

1. Is the proposed amendment in accordance with the Growth Policy/Neighborhood Plan?

The property is located within the boundary of the 1996 Whitefish City County Master Plan. The Master Plan Map identifies the property as "Important Farmlands". The SAG-5 (Suburban Agriculture) designation is a land use category that is consistent with and generally conforms to the "Agricultural" designation.

The Whitefish City County Master Plan states that important farmlands were designated using the Soil Conservation Service (SCS) classifications to identify these areas. In reviewing the SCS WebSoils Survey, the subject property is comprised of over 90% Half Moon-Haskill Complex (Hg) soils. The Upper Flathead Valley Area Soils Survey (1960) Issue states that Half Moon- Haskill soils complex consist of: "Cultivated areas are usually small fields and patches on small farms owned by families who depend on work off the farm for their income...They are used mainly for home gardens, oats, alfalfa, and tame grass hay." The subject property is primarily used for hay crop. The subject property is arguably not "important farmlands" as the productivity is limited. However, the proposed SAG-5 zoning does provide for agricultural land uses and hobby farms as identified in the Master Plan and the 1960 Soil Survey.

2. Is the proposed amendment designed to:

- a. Secure safety from fire and other dangers? The subject property is within the Whitefish Fire District. According to the Whitefish Fire Marshall, the proposed zone change will not impact the district (See attached Email Response). The property is not mapped in the WUI or designated as a high fire hazard area. There is a small sliver of floodplain along the Whitefish River at the very eastern edge of the subject property. The floodplain is confined within the banks of the river. Any future development or subdivision of the property would need to take the River and bank into account. Mitigations for future subdivision review could entail geotechnical analysis and setbacks from the River bank.
- b. Promote public health, public safety and the general welfare? The property fronts on Highway 40 and Kallner Lane. Highway 40 is a State Highway maintained by the MDOT. Kallner Lane is a paved County Road maintained by Flathead County. Both roads provide access to the property but Kallner Lane provides the safest access. The Flathead County Sheriff's Office provides police protection and the Whitefish Fire District provides fire and ambulance service. The proposed SAG-5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar land use restrictions. The uses permitted and conditionally permitted by the Flathead County

Zoning Regulations for the SAG-10 (existing) and SAG-5 (proposed) are almost identical. The exceptions are the SAG-10 allows Cell Towers, Dairy product processing, Ranch Employee Housing and Stables as permitted uses while the SAG-5 does not. The SAG-5 requires a CUP for Cell Towers, Stables and Schools.

- c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? The property has access to Kallner Lane which is a paved County maintained road and Highway 40 which is a State maintained highway. The property is undeveloped and therefore has no sewer or water facilities. If a subdivision were proposed on the property, the development would most likely be served by individual septic and individual or public water system. The property is within the Whitefish School District. In general, larger lots like the 5 plus acres proposed with the SAG-5 zoning require less park land than more urban densities.

3. Does the proposed amendment consider:

- a. The reasonable provision of adequate light and air? The proposed SAG-5 zoning designation has a minimum lot size of five acres and identical setbacks to the SAG-10. The neighborhood at Kallner and Highway 40 area consists of a mix of lots sizes ranging from 12 units per acre in the Montarra directly to the west, 2.5 acres lots just south of Highway 40, and 10 acre lots to the north and east. The proposed SAG-5 zoning designation does provide adequate light and air.
- b. The effect on motorized and non-motorized transportation systems? The subject parcel has direct access to Kallner Lane and Highway 40. Kallner Lane appears to have a 40'-easment width for most of its length while Highway 40 appears to have varying right-of-way widths with approximately 180 feet at the narrowest point. The road network provides good access for vehicles and with the relatively low traffic volumes (73 per day according to the Flathead County Road Department 2004 counts which were the last numbers available) provides a safe road for non-motorized travel. Since that time however, the Riverside at Whitefish development has occurred along with the Montarra project

which connect to Kallner Lane but not as a primary access. There are no public bike or pedestrian trails on Kallner or Highway 40.

- c. Compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities? The subject property is located adjacent to the City of Whitefish. However, the current Whitefish Growth Policy does not allow urban density in the outlying areas until such time as 50% of the developable areas inside the urban designations are built out.
- d. The character of the district and its peculiar suitability for particular uses? The subject parcel is a 62.48 acre tract that is surrounded by a mix of uses and densities. (See Figure 2). The property to the south consists of small tracts 2 to 5 acres in size with an R-2.5 zoning designation. The properties to the north and east consist of 10 acre tracks and greater with estate type houses. The property east of Kallner Lane is in the City Limits with WR-2(PUD) zoning designations comprising of multi-family condominium and single family residential development. The uses allowed in the AG 20 are almost identical to those of the proposed SAG-5.

Figure 2



Considering the provisions of Spot Zoning and the “Three Part Test” as provided by legal precedent in Little vs. Board of County Commissioners. Spot Zoning is determined by the Court to be an illegal action if the request is found to meet **all** three of the tests. The three tests are as follows:

- i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The proposed SAG-5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar land use regulations. The exceptions are the SAG-10

allows , Cell Towers, Dairy product processing, Ranch Employee Housing and Stables as permitted uses while the SAG-5 does not. The SAG-5 requires a CUP for Cell Towers, Stables and Schools. As the land uses in both the existing and proposed zoning districts are almost identical, the proposed action does not meet this test

- ii. The zoning applies to a small area or benefits a small number of separate landowners.

The proposed zone change encompasses 62 acres in a single ownership. Although this is not a huge property it is significantly bigger than those adjacent. This test is a matter of opinion as to the scale of the request and could be argued either way. However, with a single ownership, this most likely meets this test.

- iii. The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and this is in the nature of special legislation.

The property proposed for the zone change is under a single ownership; however, the property abuts the City with urban densities on the west. While south of Highway 40 is a large area of R-2.5 zoning. The proposed zoning designation is a happy medium between the urban/R-2.5 and the SAG-10. The SAG-5 and SAG-10 are almost identical except for the density. Approving the proposed zone change will blend with surrounding neighborhoods and is not considered a special benefit. The proposed action does not meet this test.

As presented the proposed zone change application does not meet **all** three tests for "spot zoning" and therefore should be considered a legal request.

- e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area? The permitted and conditionally permitted uses of the proposed Zoning designation of SAG-5 are almost identical to that of the existing SAG-10 zoning classification. The primary difference between the two zoning designations is the density where the proposed zoning designation has a minimum lot size of

5 acres per lot and the existing zoning designation has a minimum lot size of 10 acres per lot.

4. Is the proposed amendment, as nearly as possible, compatible with the zoning ordinances of nearby municipalities?

The City of Whitefish is located just west of Kallner Lane. The development within the City at this location is called the Riverside at Whitefish development. The densities in Riverside vary from 3 units per acre in the Lakes Village Plat to 12 units per acre in the Montarra. The proposed request for SAG-5 with a density of 1 dwelling per five acres is far below that of the City. However urban densities cannot be obtained on this property without the City's Sewer and water infrastructure which also comes with annexation. The applicants could request annexation into the City, but the City cannot grant this property urban density without running afoul of the City's Growth Policy which does not allow urban expansion of the City until they reach 50% build out of all available lands in the City. The growth policy limit is tough to meet because not all of the land owners within the City that have large tracts want to develop their land. Therefore it could be many years before the City reaches the 50% threshold.

The signing of this application signifies approval for the Flathead County Planning & Zoning staff to be present on the property for routine monitoring and inspection during approval process.



Owner/Applicant Signature(s)



Date

APPLICATION PROCESS

APPLICABLE TO ALL ZONING APPLICATIONS:

A. Pre-Application Meeting:

A pre-application meeting is highly recommended. This can be scheduled at no cost by contacting the Planning & Zoning office. Among topics to be discussed are: Master Plan compatibility with the application, compatibility of proposed zone change with surrounding zoning classifications, and the application procedure.

B. Completed application.

C. Application fee.

D. The application must be accepted as complete by the Flathead County Planning & Zoning staff prior to the date of the planning board meeting at which it will be heard in order that requirements of state statutes and the zoning regulations may be fulfilled.

APPLICABLE TO APPLICATIONS FOR ZONE CHANGE:

A. Application Contents:

1. Completed Zone Change application, including signatures of all property owners applying for zoning map amendment.

IF this is a **MAP** amendment the following are also required:

- i) A map showing the location and boundaries of the property (*vicinity map*).
- ii) A Title Report of the subject property
- iii) **Certified** Adjoining Property Owners List must be submitted with the application (*see forms below*). The list will be sent directly to the Planning & Zoning office, unless you request otherwise. This list is valid for a period of 6 months from date generated. You may also get a certified adjoining landowners list from a title company if you choose.

By: **SANDS SURVEYING, Inc.**
2 Village Loop
Kalispell, MT 59901
(406) 755-6481

JOB NO: 337504
DATE: October 6, 2014
FOR: VAN SHAW



VICINITY MAP
SEC. 8, T.30N., R.21W., P.M.,M.,
FLATHEAD COUNTY, MONTANA

SCALE : 1" = 1000'
1000' 500' 0 1000' 2000'

